

REMARKS

I. Status of Claims

Claims 1-12 are pending with claims 1, 4, 5, 7, 10 and 11 being independent. Applicants thank the Examiner for indicating that claims 3 and 9 would be allowable if written in independent form including all of the limitations of the base claim and any intervening claims.

II. Response to Examiner's Comments Presented in Final Office Action

Regarding claims 1, 2, 4, 5 and 10, the Examiner indicated that the limitations argued by the Applicants were directed to limitations recited in the preamble and that the limitations in the preamble of the claims do not have patentable weight. However, Applicants respectfully disagree and refer the Examiner to MPEP 2111.02 in which it states "Any terminology in the preamble that limits the structure of the claimed invention must be treated as a claim limitation. See, e.g., *Corning Glass Works v. Sumitomo Elec. U.S.A., Inc.*, 868 F.2d 1251, 1257, 9 USPQ2d 1962, 1966 (Fed. Cir. 1989)" and states that "If the claim preamble, when read in the context of the entire claim, recites limitations of the claim, or, if the claim preamble is 'necessary to give life, meaning, and vitality' to the claim, then the claim preamble should be construed as if in the balance of the claim. *Pitney Bowes, Inc. v. Hewlett-Packard Co.*, 182 F.3d 1298, 1305, 51 USPQ2d 1161, 1165-66 (Fed. Cir. 1999)." By way of example, with respect to claim 1, the body of the claim recites "the sensor section", "the magnet", "the folder" and "the first to forth states". Each of these elements refers back to the preamble and are defined therein. Without referring back to the preamble, the steps recited in the body of the claim lacks meaning and purpose. Therefore, the preamble is 'necessary to give life, meaning, and vitality' to the claim, and thus the preamble should be given patentable weight. Accordingly, Applicants respectfully request that the Examiner consider the preamble of claims 1, 2, 4, 5 and 10 and the arguments presented below.

Regarding claims 4 and 10, the Examiner argued that since MIZUTA discloses sensors that can detect the state of a flip phone and OPELA discloses speakerphone capabilities, it is obvious to "convert the mode of the rotation touch phone into the speakerphone mode when the first sensor detects the magnet, which represents that the folder is in the first state" or "converting the mode of the rotation touch phone into the speakerphone mode when the second

sensor detects the magnet, which represents that the folder is in the fourth state". The Applicants respectfully disagree and argue that **the combination of references fails to teach the timing of when the mode of the phone is converted to the speaker phone mode**. Therefore, the combination of MIZUTA and OPELA fails to teach "converting the mode of the rotation touch phone into the speakerphone mode when the first sensor detects the magnet, which represents that the folder is in the first state" or "converting the mode of the rotation touch phone into the speakerphone mode when the second sensor detects the magnet, which represents that the folder is in the fourth state". The Examiner is encouraged to review the revised arguments for claims 4 and 10 presented below.

Regarding claim 7, the Examiner has rejected the claim using the newly cited reference JUNICHIRO et al. (JP 2001-169166 A) which is a non-English reference. More specifically, the Examiner at the least cited paragraphs 79 and 88. The contents of the cited paragraphs are not readily discernible from the provided English abstract or the drawings. Further, an English translation of JUNICHIRO et al. has not been provided. The Applicants refer the Examiner to MPEP 706.02 II in which it indicates that "if the [prior art] document is in a language other than English and the Examiner seeks to rely on that document, a translation must be obtained so that the record is clear as to the precise facts the Examiner is relying upon in support of the rejection." Accordingly, Applicants respectfully request that the office action be resent with an English translation of JUNICHIRO et al.

III. Rejections under 35 U.S.C. §102(e) as being anticipated by MIZUTA et al. (US 2003/0064758 A1)

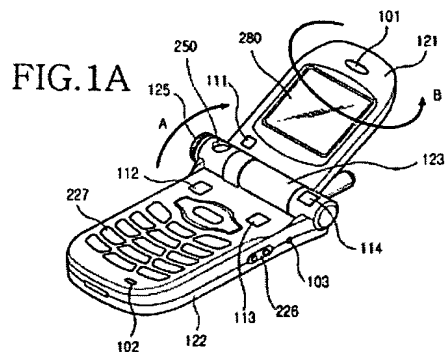
The Examiner has rejected claims 1 and 2 under 35 U.S.C. §102(e) as being anticipated by MIZUTA et al. (US 2003/0064758 A1), hereafter referred to as MIZUTA. Applicants respectfully request reconsideration of the rejections because MIZUTA neither explicitly nor implicitly, discloses, suggests, teaches or anticipates each and every feature of claim 1. In particular, independent claim 1 recites:

A method for detecting a folder position in a rotation touch phone having a camera, the rotation touch phone including a sensor section, a folder, a body, and a connecting section, the folder having a magnet, the sensor section including first, second

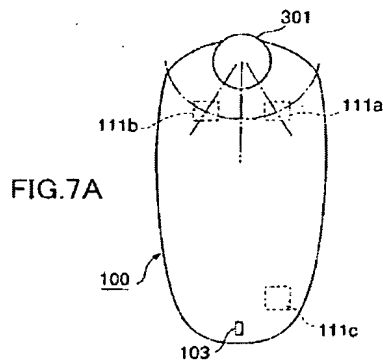
and third sensors for detecting the magnet, the first and second sensors being located on the body and the third sensor being located on the connecting section, the connecting section connecting the folder to the body, the folder being movable from first, second, third and fourth states, the first state signifying a state in which the folder is initially closed, the second state signifying a state in which the folder has been opened from the first state, the third state signifying a state in which the folder has been rotated substantially 180 degrees from the second state, the fourth state signifying a state in which the folder has been closed from the third state, wherein the orientation of the folder with respect to the body in the fourth state is different than the orientation of the folder with respect to the body in the first state, the method comprising the steps of:

- i) receiving a signal from the sensor section notifying that the sensor section detects the magnet; and
- ii) deciding that the folder is in at least one of the first to fourth states, based on the signal input from the sensor section (emphasis added).

As emphasized above, claim 1 recites that the phone have a camera and that the third sensor of the sensor section be located on the connecting section. As exemplified in the Applicants' drawing figure 1A, reproduced below for the Examiner's convenience, the phone includes a camera (element 250) and a third sensor (element 114) that is located on the connecting section. The location of the third sensor on the connecting section is beneficial in that it enables the determination of the folder having been completely rotated 180 degrees.



By contrast, MIZUTA fails to disclose that the phone has a camera and fails to disclose that the third sensor is located on the connecting section. Applicants' have reviewed MIZUTA and are unable to find any teaching or suggestion of a phone having a camera. Should the Examiner maintain the rejection, the Applicants respectfully requests that the Examiner clearly articulate how MIZUTA is being interpreted as anticipating the feature of the phone having a camera. Further, while MIZUTA does disclose three sensors, MIZUTA dose not disclose that at least one of the sensors is located on the connecting section. As specified in MIZUTA's paragraph 94 and drawing figure 7A, all three of MIZUTA's sensors are located in the main body and thus are not on the connecting section. MIZUTA's drawing figure 7A is reproduced below for the Examiner's convenience.



Therefore, MIZUTA fails to either explicitly or implicitly, disclose, suggest, teach or anticipate each and every feature of claim 1. In particular, MIZUTA does not teach that the phone has a camera and that the third sensor of the sensor section is located on the connecting section. Therefore, claim 1 is allowable over MIZUTA for the reasons given above. Moreover, dependent claim 2 is allowable for the reasons given above by virtue of its dependence on independent claim 1.

IV. Rejections under 35 U.S.C. 103(a) as being as being unpatentable over OPELA (US 2004/0204122 A1) in view of MIZUTA et al. (US 2003/0064758 A1)

The Examiner has rejected claims 4 and 10 under 35 U.S.C. §103(a) as being unpatentable over OPELA (US 2004/0204122 A1) in view of MIZUTA et al. (US 2003/0064758 A1), hereafter referred to as MIZUTA. Applicants respectfully requests reconsideration of the rejections because OPELA and MIZUTA, neither alone nor in combination, explicitly or implicitly, discloses, suggests, teaches or renders obvious the subject matter of claim 4. In particular, independent claim 4 recites:

A method for converting a mode of a rotation touch phone having a camera into a speakerphone mode by detecting a folder position, the rotation touch phone including a sensor section, a folder, a body, and a connecting section, the folder having a magnet and a bi-directional speakerphone, the sensor section including first, second and third sensors for detecting the magnet, the first and second sensors being located on the body and the third sensor being located on the connecting section, the connecting section having the camera and connecting the folder to the body, the folder being movable from first, second, third and fourth states, the first state signifying a state in which the folder is initially closed, the second state signifying a state in which the folder has been opened from the first state, the third state signifying a state in which the folder has been rotated substantially 180 degrees from the second state, the fourth state signifying a state in which the folder has been closed from the third state, wherein the orientation of the folder with respect to the body in the fourth state is different than the orientation of the folder with respect to the body in the first state, the method comprising the steps of:

i) converting the mode of the rotation touch phone into the speakerphone mode when the first sensor detects the magnet, which represents that the folder is in the first state in which the folder is closed; and

ii) converting the mode of the rotation touch phone into the speakerphone mode when the second sensor detects the magnet, which represents that the folder is in the fourth state in which the folder is closed by being rotated from the third state (emphasis added).

As emphasized above, the claim 4 recites that the phone have a camera, that the third sensor of the sensor section be located on the connecting section, converting the mode of the rotation touch phone into the speakerphone mode when the first sensor detects the magnet, which represents that the folder is in the first state, and converting the mode of the rotation touch phone into the speakerphone mode when the second sensor detects the magnet, which represents that the folder is in the fourth state. As exemplified in drawing figure 1A reproduced below, the phone includes a camera (element 250) and a third sensor (element 114) that is located on the connecting section. The location of the third sensor on the connecting section is beneficial in that it enables the determination of the folder having been completely rotated 180 degrees.

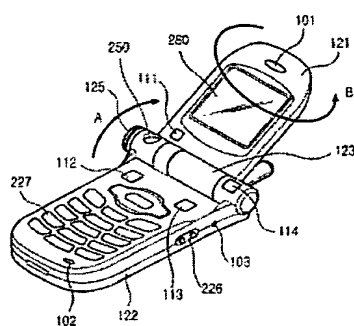


FIG. 1A

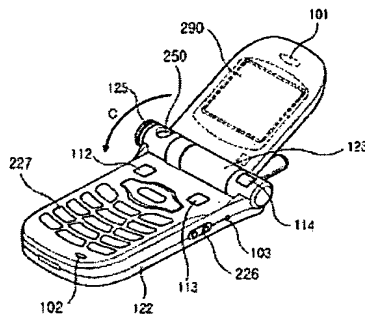


FIG. 1B

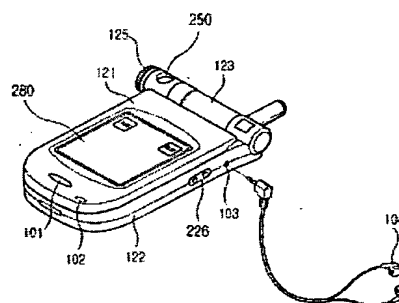
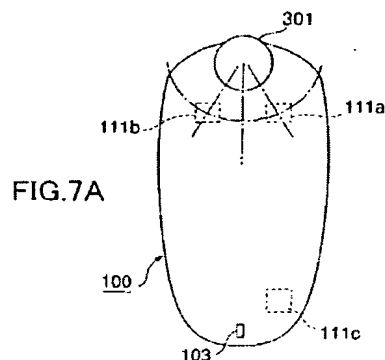


FIG. 1C

As exemplified in drawing figures 1A-1C, when the portable device depicted in drawing figure 1A is folded, the portable device is in the first state. Drawing figure 1A exemplifies the portable device in the second state. Drawing figure 1B exemplifies the portable device the third state. Drawing figure 1C exemplifies the portable device in the fourth state. Claim 4 recites converting the mode of the rotation touch phone into the speakerphone mode when the second sensor detects the magnet, which represents that the folder is in the fourth state.

By contrast, neither OPELA nor MIZUTA disclose that the phone has a camera or a third sensor that is located on the connecting section. Applicants' have reviewed MIZUTA and are unable to find any teaching or suggestion of a phone having a camera. Should the Examiner

maintain the rejection, the Applicants respectfully request that the Examiner clearly articulate how OPELA or MIZUTA is being interpreted as disclosing the feature of the phone having a camera. Further, while MIZUTA does disclose three sensors, MIZUTA does not disclose that at least one of the sensors is located on the connecting section. As specified in MIZUTA's paragraph 94 and drawing figure 7A, all three of MIZUTA's sensors are located in the main body and thus are not on the connecting section. Further, OPELA fails to disclose any sensors that are located on the connecting section. MIZUTA's drawing figure 7A is reproduced below for the Examiner's convenience.



Furthermore, while OPELA discloses use of a speakerphone in either of open or closed configurations, OPELA does not disclose converting the mode of the rotation touch phone into the speakerphone mode when the first sensor detects the magnet, which represents that the folder is in the first state, and converting the mode of the rotation touch phone into the speakerphone mode when the second sensor detects the magnet, which represents that the folder is in the fourth state. Instead OPELA is focused on initiating communications from a wireless communications device based upon the configuration of the wireless communications device. Initiating communications based upon a configuration of the wireless communications device and converting the mode of the rotation touch phone into the speakerphone mode based upon the configuration of the wireless communications device are clearly not the same. In addition, MIZUTA does not disclose converting the mode of the rotation touch phone into the speakerphone mode based upon the configuration of the wireless communications.

In other words, just because MIZUTA discloses sensors that can detect the state of a flip phone and OPELA discloses speakerphone capabilities, does not make it obvious to "convert the mode of the rotation touch phone into the speakerphone mode when the first sensor detects the

magnet, which represents that the folder is in the first state” or “converting the mode of the rotation touch phone into the speakerphone mode when the second sensor detects the magnet, which represents that the folder is in the fourth state”. **The combination of references fails to teach the timing of when the mode of the phone is converted to the speaker phone mode.**

Should the Examiner maintain the rejection, the Applicants respectfully request that the Examiner clearly articulate how OPELA or MIZUTA is being interpreted as disclosing the subject matter of converting the mode of the rotation touch phone into the speakerphone mode when the first sensor detects the magnet, which represents that the folder is in the first state, and converting the mode of the rotation touch phone into the speakerphone mode when the second sensor detects the magnet, which represents that the folder is in the fourth state.

Therefore, OPELA and MIZUTA fail to either alone or in combination, explicitly or implicitly, disclose, suggest, teach or render obvious all of the subject matter of claim 4. Therefore, claim 4 is allowable over OPELA and MIZUTA for the reasons given above. Independent claim 10 comprises similar subject matter to that discussed above with respect of claim 4 and is therefore allowable for similar reasons.

V. Rejections under 35 U.S.C. §103(a) as being as being unpatentable over MIZUTA et al. (US 2003/0064758 A1) in view of AAGAARD et al. (US 6,839,576 A)

The Examiner has rejected claims 5, 6 11 and 12 under 35 U.S.C. §103(a) as being unpatentable over MIZUTA et al. (US 2003/0064758 A1), hereafter referred to as MIZUTA, in view of AAGAARD et al. (US 6,839,576 A), hereafter referred to as AAGAARD. Applicants respectfully requests reconsideration of the rejections because MIZUTA and AAGAARD, neither alone nor in combination, explicitly or implicitly, discloses, suggests, teaches or renders obvious the subject matter of claim 5. In particular, independent claim 5 recites:

A method for utilizing first and second display sections as an illumination source when photographing an object by detecting a position of a folder in a rotation touch phone having a rotatable camera, the rotation touch phone including a sensor section, a folder, a body, and a connecting section, the folder having a magnet and the first and second display sections, the sensor section including first, second, and third sensors for detecting the magnet,

the first and second sensors being located on the body and the third sensor being located on the connecting section, the connecting section connecting the folder to the body and having the camera, the folder being movable from first, second, third and fourth states, the first state signifying a state in which the folder is initially closed, the second state signifying a state in which the folder has been opened from the first state, the third state signifying a state in which the folder has been rotated substantially 180 degrees from the second state, the fourth state signifying a state in which the folder has been closed from the third state, wherein the orientation of the folder with respect to the body in the fourth state is different than the orientation of the folder with respect to the body in the first state, the method comprising the steps of:

- i) deciding that the folder is in at least one of the first to fourth states, when the sensor section inputs a signal notifying that the sensor section detects the magnet; and
- ii) utilizing at least one of the first and second display sections as the illumination source when the folder is in at least one of the second and third states (emphasis added).

As emphasized above, claim 5 recites utilizing first and second display sections function as an illumination source when photographing an object by detecting a position of a folder in a rotation touch phone having a rotatable camera, and utilizing at least one of the first and second display sections as the illumination source when the folder is in at least one of the second and third states. By contrast, neither MIZUTA nor AAGAARD disclose utilizing first and second display sections as an illumination source when photographing an object by detecting a position of a folder in a rotation touch phone having a rotatable camera, and utilizing at least one of the first and second display sections as the illumination source when the folder is in at least one of the second and third states. MIZUTA does disclose two display sections wherein one or the other is utilized depending upon the state of the phone. However, MIZUTA does not disclose that either of the display sections can be used as an illumination source, let alone an illumination

source when photographing an object. Further, MIZUTA does not disclose a rotatable camera. While AAGAARD does disclose a camera and a display, AAGAARD does not disclose that the camera is rotatable. Nor does AAGAARD disclose that the display sections can be used as an illumination source, let alone an illumination source when photographing an object. Should the Examiner maintain the rejection, the Applicants respectfully request that the Examiner clearly articulate how MIZUTA and AAGAARD is being interpreted as disclosing first and second display sections being used as an illumination source when photographing an object by detecting a position of a folder in a rotation touch phone having a rotatable camera, and utilizing at least one of the first and second display sections as the illumination source when the folder is in at least one of the second and third states.

Therefore, MIZUTA and AAGAARD fails to either alone or in combination, explicitly or implicitly, disclose, suggest, teach or render obvious all of the subject matter of claim 5. Therefore, claim 5 is allowable over MIZUTA and AAGAARD for the reasons given above. Independent claim 11 comprises similar subject matter to that discussed above with respect of claim 5 and is therefore allowable for similar reasons. Moreover, dependent claims 6 and 12 are allowable for the reasons given above by virtue of their dependence on independent claims 5 and 11.

VI. Rejections under 35 U.S.C. §103(a) as being as being unpatentable over JUNICHIRO et al. (JP 2001-169166 A) in view of MIZUTA et al. (US 2003/0064758 A1)

The Examiner has rejected claims 7 and 8 under 35 U.S.C. §103(a) as being unpatentable over JUNICHIRO et al. (JP 2001-169166 A), hereafter referred to as JUNICHIRO, in view of MIZUTA et al. (US 2003/0064758 A1). Applicants respectfully request reconsideration of the rejections because JUNICHIRO and MIZUTA, neither alone nor in combination, explicitly or implicitly, discloses, suggests, teaches or renders obvious the subject matter of claim 7. In particular, independent claim 7 recites:

A rotation touch phone comprising a folder, a body, and a connecting section, comprising:
a camera adapted to take pictures for the rotation touch phone;

first and second display sections adapted to input and output information for the rotation touch phone;

a sensor section adapted to detect a position of a magnet disposed on the folder section, the sensor section including first, second and third sensors, the first and second sensors being located on the body and the *third sensor being located on the connecting section*;

the folder being adapted to move from first, second, third and fourth states, the first state signifying a state in which the folder section is initially closed, the second state signifying a state in which the folder section has been opened from the first state, the third state signifying a state in which the folder section has been rotated substantially 180 degrees from the second state, the fourth state signifying a state in which the folder section has been closed from the third state, wherein the orientation of the folder with respect to the body in the fourth state is different than the orientation of the folder with respect to the body in the first state; and

a controller adapted to receive a signal from the sensor section indicating that the sensor section detects the magnet; and decide that the folder section is in at least one of the first to fourth states, based on the signal input from the sensor section (emphasis added).

As emphasized above, claim 7 recites a sensor section adapted to detect a position of a magnet disposed on the folder section, the sensor section including first, second and third sensors, the first and second sensors being located on the body and the *third sensor being located on the connecting section*. For the above emphasized subject matter, the Examiner cited paragraph 88 of JUNICHIRO as disclosing that it would have been obvious that shank condition sensor 55 “must be located on the connecting section in order to detect the physical position of the flip 20 with respect to the body section 10.” The Applicants respectfully disagree and argue

that the Examiner has failed to establish *prima facie* case of obviousness for sensor 55 to be located on the connecting section. A *prima facie* case of obviousness requires three basic criteria to be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. At the least, the Examiner has failed to meet the first and third requirements by not providing a prior art reference (or references when combined) that teach or suggests all the claim limitations and by not providing proper motivation.

At best JUNICHIRO teaches of a sensor for detecting an angler or positional relationship of the flip unit and the main unit, according to the angle of a movable portion of the axial unit. In other words, JUNICHIRO merely discloses the sensor and its function without disclosing the structure or method by which the function is achieved. By contrast, claim 7 recites structural elements for a sensing section including “the third sensor being located on the connecting section”. The Examiner’s assertion that the sensor “*must* be located on the connecting section in order to detect the physical position of the flip 20 with respect to the body section 10” is incorrect. By way of example, consider MIZUTA, in which a sensor is disclosed for detecting an angler or positional relationship of the flip unit and the main unit, according to the angle of a movable portion of the axial unit. As made clear in the arguments presented below, MIZUTA’s sensor is performing the same function as JUNICHIRO’s sensor but without the sensor being located on the connecting section. Thus, it is incorrect to say that that JUNICHIRO’s sensor “*must* be located on the connecting section in order to detect the physical position of the flip 20 with respect to the body section 10”

Further, by indicating that it would have been obvious for sensor 55 to be located on the connecting section, the Examiner is admitting that JUNICHIRO does not teach the subject matter. Thus, JUNICHIRO fails to teach that sensor 55 is located on the connecting section. Further, the Examiner has failed to provide a secondary prior art reference that teaches or suggests that which the Examiner admits JUNICHIRO does not teach. It is never appropriate to rely solely on “common knowledge” in the art without evidentiary support in the record, as the principal evidence upon which a rejection was based. *In re Zurko*, 258 F.3d at 1385, 59 USPQ2d

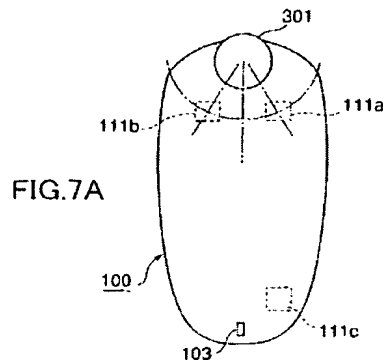
at 1697. Therefore, since the Examiner has not provided a prior art reference (or references when combined) that teach or suggest all the claim limitations the Examiner has failed to establish a *prima facie* case of obviousness for the rejection. Accordingly, withdrawal of the rejection based on JUNICHIRO is hereby requested.

However, if in not providing a reference that teaches a sensor located on the connecting section, the Examiner was attempting to take an Examiner's Official Notice (EON), Applicants respectfully argue that the EON is not adequate and traverse the EON. The Examiner is referred to section 2144.03 of the MPEP. "Official notice without documentary evidence to support an Examiner's conclusion is permissible only in some circumstances." "If such notice is taken, the basis for such reasoning must be set forth explicitly. The Examiner must provide specific factual findings predicated on sound technical and scientific reasoning to support his or her conclusion of common knowledge. See *Soli*, 317 F.2d at 946, 37 USPQ at 801; *Chevenard*, 139 F.2d at 713, 60 USPQ at 241." Here, the Examiner has merely made a conclusion and has not provided specific factual findings predicated on sound technical and scientific reasoning to support his or her conclusion. Therefore the EON is inadequate for the above reason and the Examiner is respectfully requested to provide documentary evidence to support the Examiner's conclusion.

Further, the Examiner has failed to provide any motivation for the medication of JUNICHIRO. It is the duty of the Examiner to explain why a combination of the teachings is proper. Ex parte Skinner, 2 USPQ2d 1788 (Bd. Pat. App. & Inter. 1986). Here, the Examiner has merely made a conclusionary statement that it is obvious that JUNICHIRO's sensor section is located on the connecting section. Therefore, for at least the above reason, the Examiner has failed to establish a *prima facie* case of obviousness for the rejection. Accordingly, Applicants respectfully request that if the Examiner maintains or presents new rejections, that the rejections include proper motivation. Further, withdrawal of the rejection based on JUNICHIRO is once again hereby requested.

Furthermore, MIZUTA fails to make up for JUNICHIRO's deficiency. MIZUTA fails to disclose that the third sensor is located on the connecting section. While MIZUTA does disclose three sensors, MIZUTA dose not disclose that at least one of the sensors is located on the connecting section. As specified in MIZUTA's paragraph 94 and drawing figure 7A, all three of

MIZUTA's sensors are located in the main body and not on the connecting section. MIZUTA's drawing figure 7A is reproduced below for the Examiner's convenience.



Therefore, MIZUTA fails to either explicitly or implicitly, disclose, suggest, teach or anticipate each and every feature of claim 1. In particular, MIZUTA does not teach that the third sensor of the sensor section is located on the connecting section. Therefore, JUNICHIRO and MIZUTA fail to either alone or in combination, explicitly or implicitly, disclose, suggest, teach or render obvious all of the subject matter of claim 7. Therefore, claim 7 is allowable over JUNICHIRO and MIZUTA for the reasons given above. Moreover, dependent claim 8 is allowable for the reasons given above by virtue of its dependence on independent claim 7.

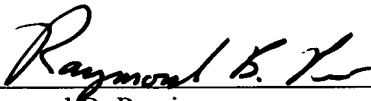
Appl. No. 10/765,087
Amdt. dated November 9, 2006
Reply to Office Action of August 10, 2006

VII. Conclusion

In view of the above, it is believed that the above-identified application is in condition for allowance, and notice to that effect is respectfully requested. Should the Examiner have any questions, the Examiner is encouraged to contact the undersigned at the telephone number indicated below.

Respectfully submitted,

Date: November 9, 2006



Raymond B. Persino
Reg. No. 58,082
Attorney for Applicant

Roylance, Abrams, Berdo & Goodman, L.L.P.
1300 19th Street, N.W., Suite 600
Washington, D.C. 20036-2680
Main: (202) 659-9076
Direct: (202) 530-7372